

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBM 001 OF 2020

(On Appeal from LTA Tribunal No. 07 of 2018).

IN THE MATTER of the Land Transport Act 1998

AND

IN THE MATTER of an Appeal by **RAJESH THAKUR** against the decision of the **LAND TRANSPORT APPEALS TRIBUNAL** delivered on 21 June 2019, for LTA to reissue and transfer the Taxi Permit No. LT 490 to **RAJESH THAKUR**

BETWEEN : **LAND TRANSPORT AUTHORITY** a statutory body established under the Land Transfer Act 1998 whose registered address is at Lot 1 Daniva Road, Valelevu, Nasinu.

APPLICANT
(Original Respondent)

AND : **RAJESH THAKUR** of Cuvu, Sigatoka, as Administrator of the Estate of Ram Dulari Thakur of Sigatoka.

RESPONDENT
(Original Appellant)

Appearances : Ms E. Dauvere for the applicant/respondent
Mrs J. Naidu for the respondent/appellant
Date of Hearing : 25 June 2020
Date of Ruling : 04 August 2020

RULING

[on leave to appeal out of time]

Introduction

[01] This is an application for leave to appeal out of time and stay of execution pending appeal.

[02] By a notice of motion accompanied by a supporting affidavit filed 20 January 2020 ("*the application*"), the applicant/respondent seeks the following orders:

1. *The applicant be given leave to appeal out of time the orders made by the Land Transport Appeals Tribunal by the Honourable Mr Lakshman on 21 June 2019, be stayed until final determination of this action where he made the following orders:*
 - a) *The LTA is directed to re-issue and transfer the Taxi Permit in the name of Sanjesh Prasad Thakur;*
 - b) *The LTA is further directed to issue the permit for the period of 10 years pursuant to the regulations; and*
 - c) *That LTA is to pay the appellant/respondent \$1,000.00 which is summarily assessed.*
2. *That the time for filing the same be extended, if necessary.*
3. *That all proceedings thereunder and execution be stayed until the hearing and determination of the appeal to the High Court of Fiji at the Civil Jurisdiction.*
4. *Any other order the court deems just and equitable; and*
5. *For a further order that the cost in this application be cost in the cause.*

[03] The respondent/appellant opposes the application. He has filed an affidavit in opposition.

[04] At the hearing, both parties made oral submission and tendered their respective written submission. I have greatly benefitted from their submissions. I am grateful for both counsel for their wonderful efforts.

Background facts

- [05] A Mr Ram Dulari Thakur, a taxi permit holder (*"the deceased"*), passed away on 25 April 1996, and the Taxi Permit expired on 24 August 2006.
- [06] Rajesh Prasad Thakur, as the administrator of the Estate of Ram Dulari Thakur, the respondent/appellant (*"the respondent"*), by his letter dated 30 September 2008, advised the Land Transport Authority, the applicant/respondent (*"the LTA"* or *"the applicant"*) that he needed to regularize the permit following the death of the permit holder.
- [07] Thereafter, the respondent applied for a probate as the administrator of the estate of the deceased permit holder and it was granted to the respondent on 14 July 2010.
- [08] On 4 August 2016, approximately 7 years after the probate was granted, the respondent lodged an application for reissue and transfer of the Taxi Permit No. LT 490. The Taxi Permit was, according to the LTA, void for 11 years and the respondent had applied for reissue and transfer of the permit 7 years later.
- [09] In the meantime, the respondent had lodged another application for reissue and transfer on 8 September 2017. This was before the LTA had dealt with the application lodged on 4 August 2016. This is, the LTA says, a duplication of application for reissue and transfer and it is an abuse of process.
- [10] On or about 4 January 2017, the appellant issued a *"Probate Checklist Directive"* and it states that *"if the probate holder lodges application after 6 months from the date of the granting of the probate, Management will process but the Board will make decision"*.
- [11] Therefore, on 25 January 2018, the LTA Board (*"the Board"*) made a decision on respondent's application dated 4 August 2016, and it refused the Taxi Permit to be reissued and transferred on the basis that it took the respondent more than 7 years to apply for renewal and transfer after the probate was received. The Board meeting minutes of 25 January 2018 reads:

"Unopposed Application for Reissue and Transfer of 1 expired T490 Ram Dulari [Background], PH passed away on 25/04/96, permit expired on 24/8/06, probate granted on 14/7/10 and application lodged 8/8/17 [Deliberation], Refused as the probate holder

took more than 7 years to apply for renewal and transfer after the probate was issued [Decision]”

- [12] On or about 27 February 2018, the LTA wrote to the respondent that the Board has resolved to refuse the application for transfer of the permit to the respondent on the ground that the probate holder took more than 7 years to apply for renewal and transfer after the probate was received, and that the probate holder failed to adhere to Regulation 3(6) of the Land Transport (Public Service Vehicle) Regulations 2000.

Appeal to the Land Transport Appeals Tribunal

- [13] The respondent appealed the decision of the LTA to the Land Transport Appeals Tribunal (the “Tribunal”) and on 21 June 2019, the Tribunal allowing the appeal delivered its judgment as follows:

- a) The LTA is directed to reissue and transfer the Taxi Permit in the name of Rajesh Prasad Thakur;*
- b) The LTA is further directed to issue the permit for the period of 10 years, pursuant to the Regulations and*
- c) The LTA is to pay the appellant \$1,000.00 costs which is summarily assessed.*

- [14] On 5 August 2019, the LTA filed an originating motion in the High Court, Lautoka to appeal the judgment of the tribunal and then filed an application for a stay pending appeal on 29 August 2019. The respondent filed a striking out application to strike out the stay application. The stay application was heard on 22 November 2019, and the court delivered its ruling dismissing the whole appeal as the appellant (LTA) did not file an enlargement of time seeking leave of the court to file its appeal out of time.

- [15] Now, the LTA has filed an application for leave to appeal the tribunal’s judgment dated 21 June 2019. That application has been filed on 20 January 2020.

Proposed grounds of appeal

- [16] The LTA intends to appeal the tribunal’s decision on the following grounds:

1. *The Tribunal erred in law in holding that the "Amnesty Period" under Regulation 18A of the Land Transport (Public Service Vehicle) (Amendment) Regulations 2017, Legal Notice No. 68 is relevant and applicable to the respondent's application for reissue and transfer dated 8 September 2017, when the said Regulation is only applicable to those permits that was not renewed by the Appellant due to the sole reason that the permit holder fails to renew their permits within the 28 days before the expiry date of the permit as stipulated under Regulation 3(6) of the Land Transport (Public Service Vehicle) Regulations 2000 which mandates all permit holders to comply with prior to any transaction with the permit.*
2. *That the Tribunal erred in law when reissuing the Taxi Permit to the Respondent, when the permit holder namely Ram Dulari Thakur had passed away in 1996 and the Taxi Permit no. LT 490 was void from 24 August 2006, thus the Taxi Permit is no longer under the Ram Dulari Thakur's estate.*
3. *That the Tribunal erred in law in consideration the Respondent's application for reissue and transfer dated 8 September 2017, when this is not the basis of the Appellant's deliberation on 25 January 2018, at the Appellant's Board meeting and decision of the Appellant dated 27 February 2018. The Tribunal had breached its own jurisdiction stipulated under section 40 (2) of the Land Transport Act 1998.*
4. *That the Appellant reserves the right to file further and additional grounds of appeal upon the receipt of the Tribunal records of its proceedings.*

The Legal framework

Appeal from Land Transport Appeal Tribunal

- [17] The Land Transport Act 1998 ('the LT Act'), section 48, states that a decision of the Tribunal shall be subject to an appeal, only on points of law, to the High Court. The Act however does not provide rules or procedures as to how an appeal made thereunder must be made. It is then the High Court Rules 1988, as amended ('HCR'), O 55, come into play. The HCR, O 55, applies to any appeal under any enactment for which no rules governing appeals have been made. As the Act does not provide rules regarding appeals from the decisions of the Tribunal, the HCR, O 55, applies to the applicant's intended appeal.

[18] The HCR, O 55, R 4 (2) provides that the notice must be served, and the appeal entered within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

Extension of time

[19] The HCR, O 3, R 4, so far as relevant states:

“Extension etc time (O 3, R 4)

4 (1) The court May, on such as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.”

Governing Principles

[20] The governing principles applicable to an application for extension of time include:

1. *The length of delay;*
2. *The reasons for delay;*
3. *Whether there is a ground of merit justifying the appellate courts consideration or, where there has been a substantial delay, nonetheless, is there a ground that would probably succeed; and*
4. *If time is enlarged, will the respondent be unfairly prejudiced (see *Abco Building Ltd v Star Printery Ltd* (ABU 87 of 2015; 7 December 2016 (Court of Appeal) and *Native Land Trust Board v Khan & Anor* (CBV 002 of 2013; 15 March 2013 (Supreme Court)).*

Discussion

[21] The applicant has right of appeal to appeal the decision of the Tribunal (the LT Act, section 48). The notice of such an appeal must be served, and the appeal entered within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought (HCR, O 55, R 4 (2)).

[22] The Tribunal made its judgment on applicant 21 June 2019. The applicant has filed this application for leave to appeal out of time on 20 January 2020. The appealable period of 28 days had expired on 18 July 2019. The application for leave to appeal has been made more than 6 months after the expiration of appealable period.

The length of delay

[23] The delay in this case is over 6 months after the date for appealable period had expired. Admittedly, the delay is substantial.

[24] The court is empowered to extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings (see HCR, O 3, R 4).

The reason for the delay

[25] The reason for the delay was that the applicant needed time to go through and analyse the Tribunal's ruling for appeal purposes, and as a result the applicant had failed to file the appeal within time.

[26] It is not a good reason for the delay that the Tribunal's judgment does not indicate the appeal period. The Court or Tribunal is not obliged to mention the appeal period within which the party against whom the decision is made when that party is represented by counsel. The expression of appeal period in the judgment or ruling may be necessary when the party against whom the decision or ruling is made was unrepresented.

[27] For the purpose of this proceeding I can say that the delay was not intentional. The applicant had initially filed its appeal out of time. That appeal was struck out on the ground that it was filed without leave of the court to appeal out of time. It appears that the first appeal out of time was made mistakenly without leave of the court.

Whether there is a ground of merit justifying the appellate courts consideration or, where there has been a substantial delay, nonetheless, is there a ground that would probably succeed

[28] The applicant intends to appeal the judgment of the Tribunal on three grounds. The first proposed ground raises the question of applicability of the amnesty period given under Reg. 18A of the Land Transport (Public Service Vehicle) (Amendment) Regulations 2017, Legal Notice No. 68 ("Reg.2017") to the respondent's application (as a probate holder) for renewal of taxi permit issued to his father, Ram Dulari Thakur, the deceased permit holder.

The Reg.2017, Reg. 18A (2) states:

"Subject to sub-regulations (3) and (4), the Authority must, in accordance with section 64(2) of the Act, renew a permit issued under the Act if an application for the renewal of the permit was lodged by the permit holder on or after 10 July 2000 and was not renewed by the Authority solely on the ground that the application for renewal was lodged after the prescribed time period at the time it was lodged."

[29] Reg. 3(6) of the Land transport (Public Service Vehicle) Regulations 2000 states that an application to a reissue of a permit must be made at least 28 days before the permit expires.

[30] The deceased permit holder passed away on 25 April 1996, and the taxi permit issued to him expired on 24 August 2006. Having obtained the probate on 14 July 2010, the respondent lodged an application for renewal and transfer on 8 August 2017. It is notable that the respondent as a probate holder made this application more than 7 years after the probate was issued to him.

- [31] It is worth to note that the taxi permit had expired some 11 years ago before the respondent making his renewal and transfer application on 8 August 2017.
- [32] According to Reg. 10 (5) (b), the permit is void if it has expired. This means that the taxi permit issued to the deceased has been void since 24 August 2006, the date on which the permit expired.
- [33] The proposed grounds of appeal raise the issue whether the respondent as a probate holder can get benefit of Reg. 18A as he is not a resident of Fiji and not a permit holder.
- [34] Another issue advanced by the proposed grounds of appeal is whether the respondent is entitled to include in the deceased permit holder's estate a permit which had expired and become non-existence.
- [35] I am provisionally satisfied that the proposed grounds of appeal demonstrate some arguable points of law and which would probably succeed.

If time is enlarged, will the respondent be unfairly prejudiced

- [36] The respondent was not getting any benefit from the taxi permit. He was approximately 7 years late in applying for renewal and transfer of the permit. I do not see that the respondent will be unfairly prejudiced, if time is enlarged.
- [37] For the above reasons, I am satisfied that I should extend the time to appeal the judgment of the Tribunal dated 21 June 2019. Therefore, I grant leave to the applicant to appeal the judgment of the Tribunal dated 21 June 2019 out of time. Accordingly, the applicant shall file notice of motion, and serve and enter the appeal within 7 days of the date of this ruling.

Stay pending appeal

- [38] The applicant also applies for a stay of proceedings on the judgment pending appeal.
- [39] When determining an application for a stay pending appeal, the court has to consider the following two factors:

(1) whether the appeal will be rendered nugatory, if the stay is not granted; and

*(2) whether the balance of convenience and the competing rights of the parties point to the granting of a stay (see *New World Limited v. Vanualevu Hardware (Fiji) Limited* [2015] FCA 172, ABU 76 of 2015, *Natural Waters of Viti Ltd v. Crystal Clear Mineral Water (Fiji) Ltd* (ABU 11 of 2004) delivered on 18 March 2005).*

[40] The impugned judgment directs that the applicant to re-issue and transfer the Taxi Permit in the name of the respondent; to issue the permit for the period of 10 years pursuant to the regulations; and to pay the respondent \$1,000.00 as costs.

[41] If the above orders are executed, the appeal will be rendered nugatory. Therefore, I am satisfied that the appeal will be rendered nugatory, if the stay is not granted.

[42] The balance of convenience and the competing rights of the parties point to the grant of a stay given the facts that there are questions of law to be decided in the appeal and that the respondent had delayed about 7 years in making his application for renewal and transfer of the permit and he was not getting benefits of the taxi permit in question.

[43] I would, therefore, grant a stay on the judgment pending appeal.

Result

1. Leave to appeal the judgment of the Tribunal dated 21 June 2019, out of time is granted.
2. The applicant shall file notice of motion, and serve and enter the appeal within 7 days from the date of this ruling.

3. There shall be a stay of proceedings on the judgment of the Tribunal dated 21 June 2019, pending appeal.
4. Costs shall be in the appeal.



M.H. Mohamed Ajmeer
4/8/20

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M.H. Mohamed Ajmeer
JUDGE

At Lautoka
04 August 2020

Solicitors:

Legal Department, LTA for the applicant

Nands Law, Barristers & Solicitors for the respondent